

Exhibit S

From: Johnson, Henry
To: Fougere, Josh
Cc: Hughes, Beth; Robertson, Brad; Huggins, Kelly J.; Klebaner, Mara E.; Spector, Stephen; Lara, Isaac G.; Simpson, Lauren; Anderson, Richard; Harris, Reid
Subject: RE: Barber v. State, Case no. 1041603
Date: Monday, March 27, 2023 4:34:54 PM
Attachments: 3.23 Execution procedures 1 redacted.pdf

EXTERNAL EMAIL - Use caution with links and attachments.

Mr. Fougere,

Please find attached the current ADOC protocol with redactions for security.

Many thanks,
Henry

Henry M. Johnson
Assistant Attorney General

Office of the Attorney General
State of Alabama
Capital Litigation Division
501 Washington Avenue
P.O. Box 300152
Montgomery, Alabama 36130
334.353.9095 Office
334.353.8400 Fax
Henry.Johnson@AlabamaAG.gov

From: Fougere, Josh <fougere@sidley.com>
Sent: Thursday, March 23, 2023 3:02 PM
To: Johnson, Henry <Henry.Johnson@AlabamaAG.gov>
Cc: Hughes, Beth <Beth.Hughes@AlabamaAG.gov>; Robertson, Brad <brobertson@bradley.com>; Huggins, Kelly J. <khuggins@sidley.com>; Klebaner, Mara E. <mklebaner@sidley.com>; Spector, Stephen <sspector@sidley.com>; Lara, Isaac G. <ilara@sidley.com>; Simpson, Lauren <Lauren.Simpson@AlabamaAG.gov>; Anderson, Richard <Richard.Anderson@AlabamaAG.gov>; Harris, Reid <Reid.Harris@AlabamaAG.gov>
Subject: RE: Barber v. State, Case no. 1041603

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Henry –

It has been over a week since my last email, and we have not received a response. I would therefore like to reiterate our request that your office at least confirm whether the attached protocol will govern Mr. Barber's execution, and, if not, to provide us with the protocol that will govern. In the recent past, your office has provided this information for other litigants facing a pending motion to set an execution date. To refuse to do so for Mr. Barber would be inequitable, particularly given the recent announcements of changes to ADOC's protocol-related processes.

Please get back to us by Monday, March 27.

Thanks,
Josh
JOSHUA J. FOUGERE

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fougere@sidley.com

From: Fougere, Josh

Sent: Tuesday, March 14, 2023 2:50 PM

To: 'Johnson, Henry' <Henry.Johnson@AlabamaAG.gov>

Cc: Hughes, Beth <Beth.Hughes@AlabamaAG.gov>; Robertson, Brad <brobertson@bradley.com>; Huggins, Kelly J. <khuggins@sidley.com>; Klebaner, Mara E. <mklebaner@sidley.com>; Spector, Stephen <sspector@sidley.com>; Lara, Isaac G. <ilara@sidley.com>; Simpson, Lauren <Lauren.Simpson@AlabamaAG.gov>; Anderson, Richard <Richard.Anderson@AlabamaAG.gov>; Harris, Reid <Reid.Harris@AlabamaAG.gov>

Subject: RE: Barber v. State, Case no. 1041603

Henry –

We are disappointed to receive your response and to hear that the AG has decided not to provide any information to Mr. Barber about the results of the investigation into Alabama's lethal injection protocol or any changes that were made to the protocol as a result of that investigation.

Please confirm whether the attached execution protocol from 2021, including the administration of the lethal drugs identified in Section IX(K)-(P) and Annexes C-D, and the equipment identified in Section VI(G), will govern for Mr. Barber's execution. If not, please provide the protocol that will govern for Mr. Barber's execution.

Best,
Josh

JOSHUA J. FOUGERE

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From: Johnson, Henry <Henry.Johnson@AlabamaAG.gov>

Sent: Friday, March 10, 2023 4:30 PM

To: Fougere, Josh <jfougere@sidley.com>

Cc: Hughes, Beth <Beth.Hughes@AlabamaAG.gov>; Robertson, Brad <brobertson@bradley.com>; Huggins, Kelly J. <khuggins@sidley.com>; Klebaner, Mara E. <mklebaner@sidley.com>; Spector, Stephen <sspector@sidley.com>; Lara, Isaac G. <ilara@sidley.com>; Simpson, Lauren <Lauren.Simpson@AlabamaAG.gov>; Anderson, Richard <Richard.Anderson@AlabamaAG.gov>; Harris, Reid <Reid.Harris@AlabamaAG.gov>

Subject: RE: Barber v. State, Case no. 1041603

Mr. Fougere,

After discussion with our client, there will be no substantive response to your request.

Best,
Henry

Henry M. Johnson
Assistant Attorney General

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Capital Litigation Division

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From: Fougere, Josh <jfougere@sidley.com>

Sent: Wednesday, March 1, 2023 10:14 AM

To: Johnson, Henry <Henry.Johnson@AlabamaAG.gov>

Cc: Hughes, Beth <Beth.Hughes@AlabamaAG.gov>; Robertson, Brad <brobertson@bradley.com>; Huggins, Kelly J. <khuggins@sidley.com>; Klebaner, Mara E. <mklebaner@sidley.com>; Spector, Stephen

<sspector@sidley.com>; Lara, Isaac G. <lara@sidley.com>; Simpson, Lauren <Lauren.Simpson@AlabamaAG.gov>; Anderson, Richard <Richard.Anderson@AlabamaAG.gov>

Subject: RE: Barber v. State, Case no. 1041603

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Thanks, Henry.

Josh
JOSHUA J. FOUGERE

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From: Johnson, Henry <Henry.Johnson@AlabamaAG.gov>
Sent: Wednesday, March 1, 2023 11:08 AM
To: Fougere, Josh <jfougere@sidley.com>
Cc: Hughes, Beth <Beth.Hughes@AlabamaAG.gov>; Robertson, Brad <bRobertson@bradley.com>; Huggins, Kelly J. <khuggins@sidley.com>; Klebaner, Mara E. <mklebaner@sidley.com>; Spector, Stephen <sspector@sidley.com>; Lara, Isaac G. <lara@sidley.com>; Simpson, Lauren <Lauren.Simpson@AlabamaAG.gov>; Anderson, Richard <Richard.Anderson@AlabamaAG.gov>
Subject: RE: Barber v. State, Case no. 1041603

Mr. Fougere,

This is to acknowledge receipt of your email. We are discussing this with our client. We will get back to you by next Friday, March 10.

Best,
Henry

Henry M. Johnson
Assistant Attorney General

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From: Fougere, Josh <jfougere@sidley.com>
Sent: Tuesday, February 28, 2023 3:37 PM
To: Johnson, Henry <Henry.Johnson@AlabamaAG.gov>
Cc: Hughes, Beth <Beth.Hughes@AlabamaAG.gov>; Robertson, Brad <bRobertson@bradley.com>; Huggins, Kelly J. <khuggins@sidley.com>; Klebaner, Mara E. <mklebaner@sidley.com>; Spector, Stephen <sspector@sidley.com>; Lara, Isaac G. <lara@sidley.com>
Subject: Barber v. State, Case no. 1041603

This message has originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Mr. Johnson –

As you probably recall, we represent James Barber in the execution proceedings that the Attorney General recently re-initiated. We have received the State's motion dated February 24, 2023,

requesting that the Alabama Supreme Court set an execution date for Mr. Barber.

As you know, your motion was filed within hours of correspondence among ADOC Commissioner Hamm, Governor Ivey, and Attorney General Marshall, indicating the end of ADOC's "top to bottom review" of its lethal injection protocol. Apart from noting that the review has concluded, however, your motion is entirely silent as to what changes, if any, have been made to the State's lethal injection protocol. Mr. Barber is therefore left to try to piece together possible changes to the lethal injection protocol by examining public reporting and speculation and, potentially, through further litigation.

We have an alternative proposal. In the interest of avoiding the expense of protracted litigation on this matter, Mr. Barber hereby requests that the Attorney General's office and/or ADOC provide him the following information:

- An explanation of the scope and results of ADOC's "top to bottom" investigation into its lethal injection protocol, including: who ADOC interviewed for this investigation, what deficiencies ADOC found in its lethal injection protocol, what changes ADOC made to its lethal injection protocol as a result of the investigation, and the results of ADOC's "multiple rehearsals" of its execution process during past few months.
- An explanation of the "increased number of medical personnel utilized by [ADOC] for executions [and] assisting medical personnel participating in the process," including what medical credentials these personnel possess, their roles in the execution, and what diligence ADOC performed in evaluating their fitness to assist in executions.
- An explanation of what "new equipment" will be "on-hand to support the individuals participating in the execution."
- The new lethal injection execution protocol, in its entirety.
- Any amended or additional training manuals that ADOC has developed to implement its new lethal injection protocol.
- Information regarding Mr. Barber's access to counsel during ADOC's attempts to set IV lines during the execution.
- At Governor Ivey's request, the Alabama Supreme Court has amended Rule 8(d)(1) of the Alabama Rules of Appellate Procedure. Under the amended rule, the Court will issue an order permitting the Governor to set a "time frame" for executions to occur. Please explain what policy, if any, that ADOC, the Governor, or the Attorney General has formed regarding the "time frame" for executions. We currently have no way of knowing how many hours or days the "time frame" will run for, which presents serious Due Process concerns for Mr. Barber.

Mr. Barber appreciates that the State may wish to keep some of the above information confidential. To this end, Mr. Barber is willing to immediately begin negotiations on a protective order that may include limited scope Attorney's Eyes Only designations.

Please let us know as soon as possible the timeframe for the State's response to the above.

Best,

Josh

JOSHUA J. FOUGERE

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